IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

SECOND APPEAL NO. 587 OF 2005

Diwakar Dhondbaji Patne vs. Ganraj Jangluji Dhongle & Ors.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
AUGUST 04, 2007.

Heard Ms. Usha Gujar, Advocate holding for Shri Kotwal, learned counsel for the appellant – original defendant.

The trial Court has decreed the suit filed by the respondents for declaration that sale deed of land situated at Khasara No.59, present Khasara No.111 admeasuring 2 hectares out of 6.28 hectares at Mouza – Isasani in Hingna Tahsil of Nagpur District, on 30.5.1990 is illegal and for declaration that further sale deed dated 30.4.1991 executed by present appellant and his partner of Harikripa Housing Agency in favour of Respondent No.10 (original defendant No.3) was also illegal. The learned counsel contends that sale deed has been found to be illegal because land was Kotwali Dungi and therefore could not have

been sold in view of provisions of Section 5(3) of Bombay Inferior Villages Watan Abolition Act, 1958. It is further argued that the case of present respondents, who were original plaintiffs, was that the land was ancestral property. As the Courts have found that it was not ancestral property, the sale deeds could not held to be vitiated. It is further contended that as the father of plaintiffs had already sold the property, the plaintiffs had no legal right to maintain suit and in any case the land cannot be ordered to be restored to plaintiffs and it has to go back to the Government.

I have perused both the judgments with the assistance of learned counsel for the appellant. The Courts below have found concurrently that the provisions of the Bombay Inferior Village Watans Abolition Act, 1958, were applicable and Section 5(3) of the Act prohibited sale of Kotwali Dungi to anybody except without previous sanction of the Collector and except on payment of such amount as the State Government may determine in this respect by general or special order. The appellant has not demonstrated that these requirements are fulfilled in the

matter. It is, therefore, obvious that sale deed dated 30.5.1990 in their favour cannot be sustained and has not been rightly sustained. Consequently, the further sale deed also falls to ground.

The contention that the land cannot be restored to plaintiffs or the firm of which the appellant is a partner was not joined as party, are misconceived insofar as said suit is concerned. The government can very well take back the land in view of the above referred Act and it does not cloth the present appellant with any right over it.

No substantial question of law arises in this Second Appeal. The same is dismissed. No order as to costs.

JUDGE

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